prints were proved to be those of the respondent.

The learned president acquitted the accused at the close of the prosecution because the only evidence against the accused was his finger print and "the accused's finger-prints, among other unidentified ones on the window of the car, which was left standing in a place accessible to anyone, cannot be legally sufficient to infer his guilt."

With respect, I do not understand what is meant by "legally sufficient". At any rate, the weight of evidence of finger-prints can never be decried. The respondent's finger-print was found on the inside surface of the glass. The mark could not have been made there except after someone (if not himself) had unlawfully tampered with the locked car to gain entry. That finger-print could only have been made during the hours of darkness when the car was taken, or before its discovery next morning. The position of the mark alone makes it self-evident that it was not made by a casual passer-by.

There is no question that a clear *prima facie* case had been made out which if unrebutted warrants a conviction.

The appeal is allowed, and the order of acquittal set aside. The case is remitted back for the learned president to call on the defence.

Appeal allowed.

RE OOI CHAN ONN

[R.Cr.J. (Ong J.) November 7, 1964]

[K.L. — Criminal Revision No. 16 of 1964]

Penal Code s. 511 — Attempted theft — Whether police supervision can be imposed — Criminal Procedure Code (Cap. 6), s. 295.

A person convicted of an attempted theft is convicted of the offence of an attempt, which must be clearly distinguished from the offence of actual completed theft.

Police supervision can only be imposed under section 295 of the Criminal Procedure Code when a person, having previously been convicted of an offence punishable with imprisonment for a term of two years or upwards is convicted of any other offence also punishable with imprisonment for a term of two years or upwards. As the offence in this case of attempted theft is punishable for a term not exceeding 18 months a conviction therefor does not justify an order for police supervision.

Case referred to:—

(1) *R.* v. *Nadaison* [1933] M.L.J. 41.

CRIMINAL REVISION.

Ong J.: The accused was convicted of attempting to commit theft under section 511 of the Penal Code and sentenced to 9 months' imprisonment to be followed by police supervision for a period of 12 months. The learned magistrate has requested me to exercise my powers under Chapter XXXI with a view to revision of the order of police supervision imposed by him pursuant to section 295 of the Criminal Procedure Code on the ground that that section would not be applicable by reason of the proviso to section 511.

Police supervision can only be imposed under section 295 of the Criminal Procedure Code when a person, having previously been convicted of an offence punishable with imprisonment for a term of two years or upwards is convicted of any other offence also punishable with imprisonment for a term of two years or upwards. In my opinion, a person convicted of attempted theft is convicted of the offence of an attempt, which must be clearly distinguished from the offence of actual or completed theft.

The punishment for the offence of attempted theft is laid down in section 511 of the Penal Code, which provides that the offence of an attempt shall be punished with such punishment as is provided for the completed offence but that any term of imprisonment shall not exceed one-half of the longest term provided for the offence. This means that whatever the penalty provided for an offence, the attempt to commit such offence is similarly punishable, except that, as regards imprisonment, the term imposed shall not exceed half of the maximum term provided for the completed offence.

Accordingly in the present case I am of opinion that the offence of attempted theft is punishable for a term not exceeding eighteen months and a conviction therefor does not justify an order of police supervision.

The case of *R.* v. *Nadaison* [1] was a case of abetment but I consider that the same principle applies to attempts with reference to the validity of orders of police supervision following a conviction and that such a matter could be resolved having regard to the maximum sentence which the court could have imposed.

I, therefore, quash the order of police supervision.

Order for police supervision quashed.

SYED AHMAD AL-JUNIED & ORS. v. RESHTY

[O.C.J. (Choor Singh J.) November 7, 1964]

[Singapore — Suit No. 368 of 1961]

Landlord and Tenant — Meaning of "Premises" — Statutory tenancy — Claim for mesne profits — Control of Rent Ordinance (Cap. 242), s. 15(1)(g) — Civil Law Ordinance (Cap. 24), s. 17(4).

In this case the plaintiffs claimed as trustees of the estate of Syed Ahmed bin Abdulrahman Alsagoff recovery of possession of a piece of land in Paya Lebar. The demised land comprised an area of 550 acres, on which

there were about 2,100 sub-tenants, who had built temporary buildings at their own expense on the land. It was alleged that the defendant had received from the sub-tenants more than 110% of the rent which she paid to the plaintiffs and possession was sought under section 15(1)(g) of the Control of Rent Ordinance. It was argued for the defendant that the land demised in this case was not "premises" within the meaning of that section.

Held: (1) for the purpose of section 15(1)(g) of the Control of Rent Ordinance, a piece of land which consists of two or more contiguous lots as in the present case and which forms the subject of a single letting and all buildings erected thereon should be considered together as a whole, and the fact that the land has a very large area or has numerous buildings on it does not take it out of the ambit of that section. The land demised to the defendant was "premises" within the meaning of section 15(1)(g) of the Control of Rent Ordinance;

(2) by holding over after the expiry of the notice to quit the defendant did not become a statutory tenant, as she was not a person protected against deprivation of possession, and she was therefore liable to pay *mesne* profits as damages for trespass.

Cases referred to:—

(1) *Happy World Ltd.* v. *Estate and Trust Agencies (1927) Ltd.* [1958] M.L.J. 155.

(2) *British and Malayan Trustees Ltd.* v. *Happy World Ltd.* [1963] M.L.J. 380

(3) *Kwek Kim Hock* v. *Ong Boon Siong* [1954] M.L.J. 253.

(4) *Ida Fernandez* v. *Murugiah* [1950] M.L.J. 83.

(5) *K. S. Mohamed Ismail* v. *Choo Pin* [1954] M.L.J. 183.

CIVIL SUIT.

C. L. Duff for the plaintiffs.

J. Grimberg for the defendant.

Cur. Adv. Vult.

Choor Singh J.: The plaintiffs' claim against the defendant is for recovery of possession of a piece of land situated in the district of Paya Lebar in Singapore together with all the buildings erected thereon and *mesne* profits from 1st April 1961.

The facts are briefly these. The plaintiffs are the trustees of the estate of Syed Ahmed bin Abdulrahman Alsagoff, deceased. The land in question forms part of the deceased's estate and comprises part of Lot 322, Lot 1-52, Lot 1-20, Lot 1-26 and Lot 1-47, Mukim 23. By a lease dated 28th September 1953 and made between the then trustees of the estate and the defendant the trustees demised the land to the defendant for a term of five years from 1st April 1953 at the monthly rent of $1,300. The lease expired on 31st March 1958. The defendant remained on the demised land at the expiration of the lease and was accepted by the plaintiffs as a tenant from month to month as from 1st April 1958 at a monthly rent of $1,400.

The demised land comprises an area of some 550 acres. There are about 2,100 sub-tenants on the land. They pay to the defendant ground rent ranging from $1 to $22. On the land occupied by them they have with the plaintiff's assent erected temporary buildings at their own expense. Prior to March 1958 there were no restrictions against sub-letting of the land and the plaintiffs readily gave permission for the erection of temporary buildings by the sub-tenants. But in March 1958 the plaintiffs obtained an order of court which forbade the erection of new temporary buildings on the land.

The plaintiffs claim possession of the land on a number of grounds. I consider it unnecessary to deal with all the grounds, because in my opinion the plaintiffs clearly succeed on the third ground, namely, that the defendant has been receiving from the sub-tenants more than 110% of the rent which she herself pays to the plaintiffs. This ground is based on section 15(1)(g) of the Control of Rent Ordinance (Chapter 242) which reads as follows:

> "(g) where the tenant having sublet the premises or part thereof receives in respect of such subletting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sublet by him;"

It was conceded by counsel for the defendant that the defendant does in fact recover rent in excess of 110% of the rent she pays to the plaintiffs. Counsel for the defendant however submitted that section 15(1)(g) of the Control of Rent Ordinance (hereinafter referred to as the Ordinance) has no application to this case. He argued that "premises" is the key word in paragraph (g) and the definition of "premises" appearing in section 2 of the Ordinance is governed by the expression "except where the context otherwise requires" appearing in the opening words of section 2. Counsel argued that the context of section 15(1)(g) requires a definition of premises more limited than that given in section 2; that it clearly contemplates premises as being a building part of which is sublet by a tenant and part of which is retained by him for his own use; and that reference to municipal services in paragraph (g) lends colour to that view. Counsel asked, can the expression "premises" in the context of section 15(1)(g) refer to 550 acres of land occupied by some 2,100 sub-tenants?

It was suggested that the test is, what mischief was section 15(1)(g) enacted to prevent? Counsel contended that it was enacted to prevent a chief tenant of a building who keeps a room and rents the rest of the building by sub-dividing it into cubicles from charging rents for the cubicles which in the aggregate exceed 110%

of the rent paid by the chief tenant. Counsel contended that the present case was on an entirely different footing and section 15(1)(g) of the Ordinance had no application.

It was submitted further that the defendant's tenancy of the land in question was in the nature of a business; she employed staff, to wit, a manager and rent collectors to collect rent from the 2,100 sub-tenants; she paid $12,120 per annum as wages to her staff; she paid $3,000 per annum as assessment; she paid $6,000 per annum as income tax on the rents collected by her from the sub-tenants; and she paid the plaintiffs $16,800 per annum as rent. And there remained about $2,000 per mensem for her when all these payments had been made. It was submitted that the tenancy was in the nature of an investment for the defendant and she was carrying on the business of rent collecting and section 15(1)(g) of the Ordinance did not apply to the land.

In my opinion, for the purposes of section 15(1)(g) of the Ordinance, a piece of land which consists of two or more contiguous lots as in the present case and which forms the subject of a single letting and all buildings erected thereon should be considered together as a whole, and the fact that the land has a very large area or has numerous buildings on it does not take it out of the ambit of section 15(1)(g). There is support for this view in two local cases. In the *Happy World Ltd.* v. *Estate & Trust Agency (1927) Ltd.*,[1] the premises which were the subject matter of the litigation were used as an amusement park and the plaintiff company sought a declaration that the land on which the amusement park stood was premises within the meaning of the Ordinance. When the lease was entered into the land was vacant land. The plaintiff company had been formed for the purpose of carrying on the business of an amusement park. In pursuance of that object, the plaintiff company erected numerous buildings on the land. These buildings comprised restaurants, cinemas, stalls, a cabaret, a stadium and other structures such as are commonly found in amusement parks. They were erected with the permission of the landlords. Tan Ah Tah J. (as he then was) held that the whole of the land constituted "premises" within the meaning of the Ordinance and came within its protection.

The Happy World amusement park was again the subject of litigation in *British & Malayan Trustees Ltd.* v. *Happy World Ltd.*,[2] where the plaintiffs sought possession of the premises. One of the grounds on which the plaintiffs relied was that the defendants had sublet a portion of the premises and they received in respect of such subletting, rents which exceeded in the aggregate 110% of the recoverable rent paid by them. Accordingly, it was alleged that section 15(1)(g) of the Ordinance applied. It was held in that case by Chua J., that the defendants by collecting from the persons occupying the various stalls, cinemas, restaurants and other buildings a total sum or nearly $17,000 per mensem when they the defendants paid only $800 per mensem to the plaintiffs, had contravened section 15(1)(g) of the Ordinance and the plaintiffs were entitled to an order for possession of the premises. The plaintiffs in the present case are relying on the very same ground for recovery of possession of their property.

Counsel for the defendant relied on the decision in *Kwek Kim Hock* v. *Ong Boon Siong*.[3] In that case the landlord let a piece of vacant land to the defendant at $6 a month. The defendant with the assent of the landlord, erected at his own expense a wooden building which contained a shop and two or three apartments which were let separately as residential quarters. The total rent received by the defendant was $85 per mensem. The landlord claimed possession on the ground that the defendant had sublet portions for an aggregate return, greatly exceeding the rent paid by him to the plaintiff. The question for the determination of the court was whether section 15(1)(g) of the Ordinance applied where the landlord lets vacant land and the tenant erects on it a building at his own expense. Taylor J. in holding that section 15(1)(g) did not apply to the facts of that case observed:

> "One cannot effectively let a building without in fact letting the site on which the building stands. From the point of view of the occupier it is all one but from the point of view of the party letting there may be two aspects. In point of law the defendant in this case, though not the landlord of the site, is the owner of the building. He has sub-let parts of the land in conjunction with original lettings, not sub-lettings, of parts of the building. It is impossible to apply paragraph (g) to these circumstances unless the rent actually paid by the occupants can be apportioned by the court, so much for the site and so much for the building, and the proportion of the rent attributable to the site exceeds 11 tenths of the ground rent. Such an apportionment would rarely be practicable and counsel for the landlord admitted that he could not attempt such an apportionment on the facts of this case. It follows that ground (g) cannot be established...."

In the present case, there is no suggestion that the 2,100 temporary buildings on the land in question were erected by the defendant at her own expense or that they are at present owned by her. The defendant has been subletting small portions of the land as vacant land and the temporary buildings in question have been erected by the sub-tenants at their own expense. The decision in *Kwek Kim Hock* v. *Ong Boon Siong* is therefore not applicable to the present case.

On the facts of this case I hold that the land

demised to the defendant is "premises" within the meaning of section 15(1)(g) of the Ordinance. The defendant has contravened section 15(1)(g) and the plaintiffs are therefore entitled to possession of the premises forthwith subject to the rights of the sub-tenants.

I shall now deal with the plaintiffs' claim for *mesne* profits. It is agreed by both parties that there was a month to month tenancy as from 1st April 1958 on the same terms as the lease. This tenancy was determined by a notice to quit dated 23rd February 1961 calling upon the defendant to deliver up possession of the land on 31st March 1961. Counsel for the plaintiffs submitted that the defendant was a trespasser as from 1st April 1961 and was liable to pay *mesne* profits. Counsel for the defendant submitted that the defendant was holding over as from 1st April 1961 and was therefore a statutory tenant under section 27(a) of the Ordinance; that she was entitled as statutory tenant to hold over until an order of court granting possession to the plaintiffs was made; that in the meantime all that she had to pay was the standard rent, and, as she was not in arrears of rent, she had nothing to pay; and that the question of *mesne* profits did not arise at all.

In my opinion, on the facts, it is not correct to say that the defendant became a statutory tenant on 1st April 1961 when she failed to deliver up possession upon the expiry of the notice to quit. The defendant could be regarded as a statutory tenant on 1st April 1961 only if on that date there were no grounds for ejecting her. It is clear law that if at the moment when the contractual tenancy is determined, the case falls within one of the exceptions set out in section 15 of the Ordinance, the landlord is not prevented from obtaining possession by the provisions of the Ordinance and therefore the tenant in such a case does not become a "statutory tenant"; see *Ida Fernandez* v. *Murugiah* [4] and *K.S. Mohamed Ismail* v. *Choo Pin.*[5] In the present case, at the moment of the determination of the contractual tenancy, the defendant was not a person protected against deprivation of possession because she had contravened section 15(1)(g) of the Ordinance and thus she did not at that moment become a statutory tenant. I therefore hold that the defendant became a trespasser as from 1st April 1961 and is liable to pay *mesne* profits.

Counsel for the defendant submitted that the question of *mesne* profits must be decided in accordance with our law because section 5(2) of the Civil Law Ordinance prohibited the introduction into Singapore of any part of the law of England relating to rights and interests in immovable property. Counsel submitted that the expression "*mesne* profits" has a statutory definition which is to be found in section 17(4) of the Civil Law Ordinance (Chapter 24) which reads as follows:

> "Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not."

It was submitted that by virtue of the provisions of section 29 of the Ordinance, the provisions of section 17(4) of the Civil Law Ordinance did not apply to a tenant of premises to which the Ordinance applied and as the premises in this case are rent-controlled, section 17(4) of the Civil Law Ordinance had no application. It was argued that the plaintiffs were therefore not entitled to claim *mesne* profits in accordance with section 17(4) of the Civil Law Ordinance and as English law could not be imported, the plaintiffs could not claim *mesne* profits in accordance with English law.

In my opinion, *mesne* profits are damages for the tort of trespass and have nothing to do with land laws or with rights and interests in immovable property. A landlord may recover in a claim for *mesne* profits the damages which he has suffered through being out of possession of the land. *Mesne* profits being damages for trespass can only be claimed from the date when the defendant ceased to hold the premises as a tenant and became a trespasser. The landlord is not limited to a claim for the profits which the defendant has received from the land, or those which he himself has lost; he may recover all the loss which has resulted from the dispossession. See 23 *Halsbury's* Laws of England, third edition, page 561.

In my view the plaintiffs are clearly entitled to the rents of the sub-tenants for the period of holding over. The defendant became a trespasser as from 1st April 1961 and accordingly she must hand over to the plaintiffs all rents that she has collected from the sub-tenants in respect of the period commencing 1st April 1961 up to date of this judgment. She is entitled to keep all rents collected by her in respect of any period before 1st April 1961. There shall be an enquiry before the registrar who shall ascertain and certify the amount that has been collected by the defendant from her sub-tenants in respect of the period from 1st April 1961 to date of this judgment. There shall be judgment for the plaintiffs for the sum so certified by the registrar less the amount that the defendant has paid to the plaintiffs by way of rent in respect of the said period.

I shall now deal with the counter-claim of the defendant. It is not in dispute that the

standard rent of the premises is $750 per mensem. Since 1st April 1953 the plaintiffs have received from the defendant $1,300 per mensem as rent and from 1st April 1958 they have received $1,400 per mensem. These rents were fixed by agreement between the parties and were stated to be subject to their being sanctioned by the Rent Conciliation Board. The plaintiffs never made the necessary application to the Rent Conciliation Board with the result that the rent which they have been receiving included an unauthorised increase. The defendant now counter-claims from the plaintiffs the excess rent that she has paid to them since 1953. It was clearly within the contemplation of the parties that the premises were subject to the Ordinance and as the rent was increased from $750 to $1,300 and later to $1,400 without the sanction of the Rent Conciliation Board the defendant is entitled to recover the excess rent paid by her to the plaintiffs.

The plaintiffs have pleaded the Limitation Ordinance. The defendant concedes that the Limitation Ordinance is applicable and that all she is entitled to is the excess rent she paid in respect of the six years immediately prior to the date of the writ in these proceedings. The writ was issued on 8th April 1961. The defendant maintains that she is entitled to recover the excess rent she paid for the period of six years from 8th April 1955 to the 7th April 1961.

In my view the defendant being a trespasser as from 1st April 1961, she is not entitled to claim the excess rent she paid for any period after that date because all such rent is to be set off against the *mesne* profits she has to pay to the plaintiffs. She is therefore entitled to a refund of the excess rent she paid for the period 8th April 1955 to 31st March 1961 which amounts to $43,071.66 as follows:

Excess rent at $550 p.m. from 8.4.55 to 31.3.58	$19,671.66
Excess rent at $650 p.m. from 1.4.58 to 31.3.61	$23,400.00
	$43,071.66

There shall be judgment for the defendant on the counter-claim for $43,071.66. I order the defendant to pay the plaintiffs' costs of the claim and the plaintiffs to pay the defendant's costs of the counter-claim.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

GOVERNMENT OF MALAYSIA & ANOR. v. KONG EE KIM

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) November 10, 1964]

[Ipoh — Federal Court Civil Appeal No. 67 of 1964]

Negligence — Injury to trespasser on village road — State land — Whether trespasser entitled to damages.

Trespass — Trespasser on State land — Injury caused by servant of Federal Government — Damages.

While the respondent a housewife was engaged in depasturing her chickens on a macadamised village road in a squatting position, behind a bush, a caterpillar motor grader which was being used to level and clear land near the village road was partly driven off the vacant land on to the village road and came in contact with her leg as a result of which the respondent suffered severe injuries to her leg. The grader was driven at the material time by one P an employee of the appellant Government and he was assisted by one N who was supposed to warn people who might be in the grader's path.

The respondent sued P and the appellant Government. On the pleadings it was admitted that the village road and the neighbouring land was State land of which the appellant Government had no right, title or interest nor was occupier thereof. The trial judge held that there was negligence on the part of P, that the respondent was a trespasser and that nevertheless P and his employers were still liable, but that as the respondent was guilty of contributory negligence (which was assessed at 50%) general and special damages should be fixed at $10,000 and $500 respectively and awarded the respondent $5,250.00. On appeal it was argued that the trial judge having found that the respondent was a trespasser proceeded to examine the appellants' liability in the light of the test of foreseeability as adopted by the English Court of Appeal in *Videan* v. *British Transport Commission* (1) instead of that adopted by the Privy Council in *Commissioner for Railways* v. *Quinlan.* (2)

Held: (1) although *Quinlan's* case is binding on the court if applicable, it was not applicable in this case because this case differed from the Privy Council case in two material particulars namely, firstly, the respondent was not a trespasser *vis-a-vis* the appellant Government as the village road was State land and secondly the respondent's trespass on the land arose not by reason of having introduced her physical person on the land but by reason of what she was doing on the land with her physical person;

(2) on a highway the possibility of pedestrians and other persons must always be assumed and every user of a highway owes a duty of care to all other users and he violates that duty if he does an act without reasonable care which injures any other user. In this case P had a duty to forsee the possibility of the physical presence of a person behind a bush and the question of whether that person was doing something lawful or unlawful was irrelevant to that duty;

(3) although the degree of contributory negligence on the part of the respondent was much greater than that imputed to be by the trial judge, that part of the decision had not been appealed against and the appeal should be dismissed with costs.

Cases referred to:—

(1) *Videan* v. *British Transport Commission* [1963] 2 Q.B. 650.

(2) *Commissioner for Railways* v. *Quinlan* [1964] A.C. 1054.

(3) *Donoghue* v. *Stevenson* [1932] A.C. 562.